

**ASSEMBLY BILL**

**No. 842**

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**Introduced by Assembly Member Swanson**

February 26, 2009

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An act to amend Sections 1400, 1401, 1402, 1402.5, and 1403 of, and to add Sections 1400.5, 1401.5, and 1401.6 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 842, as introduced, Swanson. Employment.

Existing law provides that an employer, with certain exceptions, may not order a mass layoff, relocation, or termination, as defined, at a covered establishment without giving 60 days' prior written notice to employees and the Employment Development Department and other local agencies, as well as complying with specified federal guidelines.

This bill would increase the layoff notice period from 60 to 90 days. This bill would require employers, when notice is given, to provide employees with information regarding benefits and services available to them once the notice of layoff is given. This bill would also require employers that give notice of a mass layoff, relocation, or termination to provide sufficient meeting space for the provision of rapid response activity, as defined, and to allow providers of rapid response activity services and affected employees to meet for not less than one hour for such services to be provided.

Existing law provides that an employer who fails to comply with the layoff notice requirements may be subject to civil penalties, including backpay, and liability under civil actions brought by employees unless the employer can demonstrate specified exemptions.



This bill would require the Labor and Workforce Development Agency to maintain a guide of benefits and services that may be available to employees who are the subject of a layoff, including unemployment assistance and COBRA information, and to transmit the guide to an employer who gives notice of an impending layoff, and to post the guide on the agency's Internet Web site.

This bill would also require the Labor and Workforce Development Agency to maintain a guide for employers containing development benefits and services, including trade adjustment assistance and tax credits, that could be used to avert mass layoffs or relocations of workforce employees and to transmit the guide to an employer who gives notice of an impending layoff, and to post the guide on the agency's Internet Web site.

This bill would provide that up to 10% of the civil penalties for employers who violate these provisions be used by the Labor and Workforce Development Agency to fund the their new duties under this bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1400 of the Labor Code is amended to
- 2 read:
- 3 1400. The definitions set forth in this section shall govern the
- 4 construction and meaning of the terms used in this chapter:
- 5 (a) "Covered establishment" means any industrial or commercial
- 6 facility or part thereof that employs, or has employed within the
- 7 preceding 12 months, 75 or more persons.
- 8 (b) "Employee" means a person employed by an employer for
- 9 at least 6 months of the 12 months preceding the date on which
- 10 notice is required.
- 11 ~~(b)~~
- 12 (c) "Employer" means any person, as defined by Section 18,
- 13 who directly or indirectly owns and operates a covered
- 14 establishment. A parent corporation is an employer as to any
- 15 covered establishment directly owned and operated by its corporate
- 16 subsidiary.
- 17 ~~(e)~~



1 (d) "Layoff" means a separation from a position for lack of  
2 funds or lack of work.

3 ~~(d)~~

4 (e) "Mass layoff" means a layoff during any 30-day period of  
5 50 or more employees at a covered establishment.

6 ~~(e)~~

7 (f) "Relocation" means the removal of all or substantially all of  
8 the industrial or commercial operations in a covered establishment  
9 to a different location 100 miles or more away.

10 ~~(f)~~

11 (g) "Termination" means the cessation or substantial cessation  
12 of industrial or commercial operations in a covered establishment.

13 ~~(g) (1) This chapter does not apply where the closing or layoff~~  
14 ~~is the result of the completion of a particular project or undertaking~~  
15 ~~of an employer subject to Wage Order 11, regulating the~~  
16 ~~Broadcasting Industry, Wage Order 12, regulating the Motion~~  
17 ~~Picture Industry, or Wage Order 16, regulating Certain On-Site~~  
18 ~~Occupations in the Construction, Drilling, Logging and Mining~~  
19 ~~Industries, of the Industrial Welfare Commission, and the~~  
20 ~~employees were hired with the understanding that their employment~~  
21 ~~was limited to the duration of that project or undertaking.~~

22 ~~(2) This chapter does not apply to employees who are employed~~  
23 ~~in seasonal employment where the employees were hired with the~~  
24 ~~understanding that their employment was seasonal and temporary.~~

25 (h) "Employee" means a person employed by an employer for  
26 at least 6 months of the 12 months preceding the date on which  
27 notice is required.

28 SEC. 2. Section 1400.5 is added to the Labor Code, to read:

29 1400.5. (a) This chapter does not apply if the closing or layoff  
30 is the result of the completion of a particular project or undertaking  
31 of an employer subject to Wage Order 11, regulating the  
32 Broadcasting Industry, Wage Order 12, regulating the Motion  
33 Picture Industry, or Wage Order 16, regulating Certain On-Site  
34 Occupations in the Construction, Drilling, Logging and Mining  
35 Industries, of the Industrial Welfare Commission, and the  
36 employees were hired with the understanding that their employment  
37 was limited to the duration of that project or undertaking.

38 (b) This chapter does not apply to employees who are employed  
39 in seasonal employment if the employees were hired with the  
40 understanding that their employment was seasonal and temporary.



SEC. 3. Section 1401 of the Labor Code is amended to read:

1401. (a) An employer may not order a mass layoff, relocation, or termination at a covered establishment unless, ~~60~~ 90 days before the order takes effect, the employer gives written notice of the order to the following:

(1) The employees of the covered establishment affected by the order *and their representative or union*.

(2) The *Labor and Workforce Development Agency, the Department of Industrial Relations, the* Employment Development Department, the local workforce investment board, and the chief elected official of each city and county government within which the termination, relocation, or mass layoff occurs.

(b) An employer required to give notice of any mass layoff, relocation, or termination under this chapter shall include in its notice the elements required by the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. Sec. 2101 et seq.).

(c) *Concurrent with or immediately after providing the notice required under subdivision (a), an employer shall provide the employees of the covered establishment with information regarding the benefits and services available to the employees, as described in the guide compiled by the Labor and Workforce Development Agency pursuant to Section 1401.5.*

~~(e)~~

(d) Notwithstanding the requirements of subdivision (a), an employer is not required to provide notice if a mass layoff, relocation, or termination is necessitated by a physical calamity or *an act of war*.

SEC. 4. Section 1401.5 is added to the Labor Code, to read:

1401.5. The Labor and Workforce Development Agency shall prepare the following:

(a) A guide of benefits and services that may be available to employees of covered establishments, including unemployment compensation, trade adjustment assistance, COBRA benefits, and early access to training and other services, including counseling services, available under the federal Workforce Investment Act of 1998 (29 U.S.C. Sec. 2801 et seq.). This guide shall be available on the Internet Web site of the Labor and Workforce Development Agency and shall include a description of the benefits and services, the eligibility requirements, and the means of obtaining those benefits and services.



(b) A guide of economic development benefits and services, including workforce services, that may be available to employers of covered establishments to avert mass layoff, relocation, or termination; feasibility studies; data and statistics; trade adjustment assistance; and available tax credits, financial assistance, and other incentives provided through the departments and agencies of the California state government. The guide shall focus particularly on resources for retooling to achieve greater energy efficiency. This guide shall be available on the Internet Web site of the Labor and Workforce Development Agency and shall include a description of benefits and services, their eligibility requirements, and the means of obtaining the benefits and services.

SEC. 5. Section 1401.6 is added to the Labor Code, to read:

1401.6. (a) An employer that provides the notice required by paragraph (1) of subdivision (a) of Section 1401 shall make sufficient meeting space available at the covered establishment for the provision of rapid response activity, as defined by paragraph (38) of Section 2801 of Title 29 of the United States Code. The employer shall allow a provider of rapid response activity services and an affected employee and his or her representative to meet for not less than one hour for the provision of rapid response activity services.

(b) An employee shall be compensated at his or her regular rate of pay and benefits for the meeting described in subdivision (a).

(c) The employer shall provide notice of the meeting described in subdivision (a) to the affected employee and his or her representative not less than 24 hours prior to the meeting.

SEC. 6. Section 1402 of the Labor Code is amended to read:

1402. (a) An employer who fails to give notice as required by paragraph (1) of subdivision (a) of Section 1401 before ordering a mass layoff, relocation, or termination is liable to ~~each~~ *an* employee entitled to notice who lost his or her employment for *the following*:

(1) ~~Back—pay—~~*Backpay* at the average regular rate of compensation received by the employee during the last three years of his or her employment, or the employee's final rate of compensation, whichever is higher.

(2) The value of the cost of any benefits to which the employee would have been entitled had his or her employment not been lost, including the cost of any medical expenses incurred by the



1 employee that would have been covered under an employee benefit  
2 plan.

3 (b) Liability under this section is calculated for the period of  
4 the employer's violation, up to a maximum of ~~60~~ 90 days, or  
5 one-half the number of days that the employee was employed by  
6 the employer, whichever period is smaller.

7 (c) The amount of an employer's liability under subdivision (a)  
8 is reduced by the following:

9 (1) Any wages, except vacation moneys accrued prior to the  
10 period of the employer's violation, paid by the employer to the  
11 employee during the period of the employer's violation.

12 (2) Any voluntary and unconditional payments made by the  
13 employer to the employee that were not required to satisfy any  
14 legal obligation.

15 (3) Any payments by the employer to a third party or trustee,  
16 such as premiums for health benefits or payments to a defined  
17 contribution pension plan, on behalf of and attributable to the  
18 employee for the period of the violation.

19 SEC. 7. Section 1402.5 of the Labor Code is amended to read:

20 1402.5. (a) An employer is not required to comply with the  
21 notice requirement contained in subdivision (a) of Section 1401  
22 if the department determines that all of the following conditions  
23 exist:

24 (1) As of the time that notice would have been required, the  
25 employer was actively seeking capital or business *in consultation*  
26 *with the state or local government, local economic development*  
27 *agency, or Workforce Investment Board. Information provided to*  
28 *the state, local government, local economic development agency,*  
29 *or Workforce Investment Board shall be kept confidential.*

30 (2) The capital or business sought, if obtained, would have  
31 enabled the employer to avoid or postpone the *mass layoff*,  
32 relocation, or termination.

33 (3) The employer reasonably and in good faith believed that  
34 giving the notice required by subdivision (a) of Section 1401 would  
35 have precluded the employer from obtaining the needed capital or  
36 business.

37 (b) The department may not determine that the employer was  
38 actively seeking capital or business under subdivision (a) unless  
39 the employer provides the department with both of the following:



1 (1) A written record consisting of all documents relevant to the  
2 determination of whether the employer was actively seeking capital  
3 or business, as specified by the department.

4 (2) An affidavit verifying the contents of the documents  
5 contained in the record.

6 (c) The affidavit provided to the department pursuant to  
7 paragraph (2) of subdivision (b) shall contain a declaration signed  
8 under penalty of perjury stating that the affidavit and the contents  
9 of the documents contained in the record submitted pursuant to  
10 paragraph (1) of subdivision (b) are true and correct.

11 (d) This section does not apply to notice of a mass layoff as  
12 defined by subdivision ~~(d)~~ (e) of Section 1400.

13 SEC. 8. Section 1403 of the Labor Code is amended to read:

14 1403. (a) An employer who fails to give notice as required by  
15 paragraph (2) of subdivision (a) of Section 1401 is subject to a  
16 civil penalty of not more than five hundred dollars (\$500) for each  
17 day of the employer's violation. The employer is not subject to a  
18 civil penalty under this section, however, if the employer pays to  
19 all applicable employees the amounts for which the employer is  
20 liable under Section 1402 within three weeks from the date the  
21 employer orders the mass layoff, relocation, or termination.

22 (b) *Up to 10 percent of the civil penalties levied on employers*  
23 *pursuant to subdivision (a) shall be utilized, upon appropriation,*  
24 *by the Labor and Workforce Development Agency to fund the*  
25 *activities specified under Section 1401.5.*